STATE OF MICHIGAN

COURT OF APPEALS

KOLAREVIC GROUP, L.L.C.,

Plaintiff-Appellant,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee.

UNPUBLISHED
January 11, 2002

No. 222250
Wexford Circuit Court
LC No. 98-013882-AA

Before: Neff, P.J., and Doctoroff and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8). The claim arose when defendant denied plaintiff's applications for highway sign permits, stating in the denial letter that the requested signs would violate section 13.1 of the Highway Advertising Act. MCL 252.313. After defendant failed to respond to numerous written requests from plaintiff for a statement of more specific grounds supporting defendant's denial of the permits, plaintiff sought a writ of mandamus claiming defendant had a clear legal duty to provide a more detained explanation for the denial. We affirm the grant of summary disposition by the trial court.

Plaintiff first argues that the trial court erred by finding that plaintiff's amended complaint failed to state a claim for mandamus. Plaintiff objects to the trial court's review of administrative rules and procedures, arguing that the court's review of the law impermissibly went outside the pleadings to determine the validity of the claim. We reject this argument.

This Court's review of a trial court's grant or denial of a writ of mandamus is for an abuse of discretion. *White-Bey v Dep't of Corrections*, 239 Mich App 221, 223; 608 NW2d 833 (1999). In addition, we review a grant or denial of a summary disposition motion de novo. *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000); *White-Bey*, *supra*. A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint and may not be supported by documentary evidence. *Diehl v Danuloff*, 242 Mich App 120, 123; 618 NW2d 83 (2000). In making its ruling, the court must accept all well pleaded facts as true, as well as any reasonable inferences or conclusions drawn from the facts, and determine whether such facts constitute a legal claim. *Crown Technology Park v D&N Bank, FSB*, 242 Mich App 538, 547; 619 NW2d 66 (2000); *Diehl*, *supra*. The motion should only be granted if the claims are so unenforceable as a matter of law that no factual development could justify recovery. *Id*.

A writ of mandamus is issued by the court in order to compel a public body or official to perform a clear legal duty. *Lee v Macomb Co Bd of Comm'rs*, 235 Mich App 323, 331; 597 NW2d 545 (1999), rev'd on other grounds, 464 Mich 726 (2001). Issuing a writ of mandamus is an extraordinary remedy and therefore the burden of showing its necessity is on the plaintiff. *White-Bey*, *supra*, citing *Herp v Lansing City Clerk*, 164 Mich App 150, 161; 416 NW2d 367 (1987). Before the writ will be issued, the plaintiff must show that (1) the plaintiff has a clear legal right to compel the performance of the duty being requested, (2) the defendant has a clear legal duty to perform the requested act, (3) the act is ministerial in nature, and (4) the plaintiff has no other adequate legal or equitable remedies. See *White-Bey*, *supra* at 223-224; *In re MCI Telecommunications Complaint*, 460 Mich 396, 443; 596 NW2d 164 (1999). See also *McKeighan v Grass Lake Twp Supervisor*, 234 Mich App 194, 211-212; 593 NW2d 605 (1999).

Plaintiff's amended complaint stated that it had applied for sign permits, that defendant denied those applications, that defendant cited section 13.1 of the Highway Advertising Act, MCL 252.313, as the basis for the denial, and that defendant did not provide any additional explanation for the permit denial despite plaintiff's requests. Nonetheless, plaintiff's complaint failed to allege any facts, or authority, indicating plaintiff had a clear legal right to a more detailed explanation for the permit denial, or that defendant had a clear legal duty to provide a more detailed explanation.[1] A party may not leave it to this Court to search for authority to

[1] Plaintiff's amended complaint alleged the following facts:

> 1. MCR 3.305 governs complaints for writs of mandamus and provides that such a mandamus request may be filed in this Court.
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> 2. In June, 1997, Plaintiff submitted a signed Permit Application to MDOT. On June 17, 1997, MDOT purportedly attempted to deny Plaintiff's request for sign permits. This denial was in the form of a letter dated June 17, 1997, which stated only that the permits were rejected because they violated Section 13.1 of the Highway Advertising Act. . . .
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> 3. Section 13(1) of the Highway Advertising Act is a general section which prohibits construction of signs under limited circumstances.
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> 4. Plaintiff requested numerous times over a period from July, 1997 through March, 1998 that MDOT provide particular and specific grounds for the attempted denial of the permit.
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> 5. MDOT failed to respond to the multiple requests by Plaintiff for particularized grounds for denial of the permits.
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> 6. On March 23, 1998, MDOT indicated to Plaintiff that its request for an administrative hearing was under consideration.
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> 7. On May 18, 1998, counsel for Plaintiff submitted a final letter requesting specific grounds for the denial of the Permit Applications.

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support its position. *Independence Twp v Murdoch*, 155 Mich App 770, 776; 400 NW2d 714 (1986). Nonetheless, this Court has found no statutory, administrative, or case law indicating that MDOT has a clear legal duty to provide a detailed explanation for its denial. Instead, MDOT is simply required to *consider* the factors stated in section 13.1 in deciding whether to grant plaintiff a permit. See *Delly v Bureau of State Lottery*, 183 Mich App 258, 263; 454 NW2d 141 (1990) (When deciding whether to grant or deny a lottery machine license application the Bureau of State Lottery is only under a clear legal duty to consider the factors stated in the applicable statutes and administrative rules.) Here, defendant's denial letter clearly indicates that it considered those factors when denying plaintiff's permits. In addition, we note that – despite plaintiff's position to the contrary – section 13.1 clearly states that "a sign shall not be erected or maintained in an adjacent area where the facing of the sign is visible from an interstate highway, freeway, or primary highway" unless one of the four exceptions apply.[2] MCL 252.313. Thus, plaintiff knew or had reason to know that the permits were being denied, because, in the view of the department, the proposed signs were in an "adjacent area" as defined by MCL 252.302, the facing of the signs would be visible from a highway or freeway, and the signs did not meet any of the four narrowly drawn exceptions. MCL 252.313. Further, plaintiff's amended complaint indicated that plaintiff was awaiting a ruling from MDOT on its request for an administrative hearing, an acknowledgment that plaintiff had yet to exhaust its administrative or legal remedies.[3] See *White-Bey*, *supra*.

Plaintiff also contends that the trial court should have allowed it to amend its complaint rather than granting summary disposition. There is no evidence in the record, however, that plaintiff sought to amend its complaint after defendant filed its motion for summary disposition. Because plaintiff failed to seek leave to amend its complaint, this Court has no trial court decision to review. See *Fuga v Comerica Bank-Detroit*, 202 Mich App 380, 383; 509 NW2d

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> 8. In response to the May 18, 1998 letter, MDOT again refused to provide specific grounds for denial of Petitioner's permits.
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> 9. To date, Petitioner has not received the specific grounds for the denial of the permits.
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> 10. Failure to provide more than a general notice violates Petitioner's due process rights and prevents Plaintiff from properly appealing the lack of decision on the part of MDOT.

[2] These four exceptions are: (1) the sign is a directional or other official sign, (2) the sign advertises the sale or lease of real property, and the sign is located on that property, (3) the sign advertises activities conducted or maintained on the property, or (4) the sign is located in a business area or an unzoned commercial industrial area. See MCL 252.313(1)(a)-(d)

[3] While it is true that the department denied the request for an administrative hearing during the pendency of this action, this fact was not pleaded by plaintiff in its amended complaint. In addition, plaintiff does not assert that the department's denial of an administrative hearing was appealed to the circuit court as required by the Administrative Procedures Act of 1969. MCL 24.201 *et seq*.

778 (1993). In any event, we note that a court is only obligated to give a party an opportunity to amend its complaint if the amendment would not be futile. *Lane v KinderCare Learning Centers, Inc*, 231 Mich App 689, 696; 588 NW2d 715 (1998). Here, since plaintiff had not appealed the department's decision to deny it an administrative hearing, amending the complaint would have been futile. *White-Bey*, *supra*; *Lane*, *supra*; See also *Citizens for Common Sense Gov't v Attorney General*, 243 Mich App 43, 54; 620 NW2d 546 (2000), quoting *Holman v Industrial Stamping & Mfg Co*, 344 Mich 235, 260; 74 NW2d 322 (1955); See also MCL 24.201 *et seq*.

Because there was no clear legal duty for defendant to provide a more detailed explanation for denying plaintiff's permit applications and since plaintiff failed to exhaust all possible remedies as required by law before seeking a writ of mandamus, *White-Bey*, *supra*, we find that, as a matter of law, no factual development could justify recovery for plaintiff.[4] *Diehl*, *supra*. Accordingly, the trial court properly granted defendant's summary disposition motion.

Affirmed.

/s/ Janet T. Neff
/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder

[4] Since we find that defendant had no clear legal duty to provide the requested information to plaintiff and that plaintiff failed to exhaust its administrative or other legal remedies before seeking the writ of mandamus, we need not address plaintiff's assertions that it had a clear legal right to the requested information, or that the trial court deprived plaintiff of its due process rights. See *Ewing v Detroit*, 237 Mich App 696, 704 n 4; 604 NW2d 787 (2000), citing *Detroit v Sledge*, 223 Mich App 43, 47; 565 NW2d 690 (1997).